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RECORD OF ORAL HEARING

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CHENG CHUNG WANG

Appeal 2008-0762
Application 10/647,814
Technology Center 3700

Oral Hearing Held: July 9, 2008

Before WILLIAM F. PATE, III, JENNIFER D. BAHR, and JOHN C. KERINS, Administrative Patent Judges

ON BEHALF OF THE APPELLANT:

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The above-entitled matter came on for hearing on July 9, 2008, commencing at 10:30 a.m. at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

PROCEEDINGS

JUDGE PATE: Good Morning Mr. Quintero

NELSON QUINTERO: Good morning.

JUDGE PATE: You can step up to the podium and introduce your colleague.

NELSON QUINTERO: This is Kurt Glitzenstein.

KURT GLITZENSTEIN: Good morning, I'm from Fish & Richardson.

JUDGE PATE: Ok, thank you. We've had a chance to look over this case before the hearing and we're ready to hear your arguments for patentability.

NELSON QUINTERO: Ok. Your honors, the claims at issue in this appeal recite an inflatable product, including at least an inflatable body, a socket built into the inflatable body, an electric pump including a pump body and an air outlet connected to the socket to pump the inflatable body, wherein the pump body is wholly or partially located in the socket. The disagreement between the appellant and the examiner revolves around the single and simple term inflatable body. On appellants construction, the examiner has never disputed the claims are patentable. Moreover, on application of the examiners construction, it's our view that the prior art references do not anticipate the claims at issue. I will first address appellants' construction of the term inflatable body. It's our construction of this term that it refers to a substantially air tight structure that expands or swells when filled with air or other gas. As noted, the examiner has never disputed that on this construction, appellant should prevail. In particular, the

alleged sockets of the prior art are clearly not built into the inflatable body since the alleged sockets are not built into a substantially air tight structure that expands when filled with air.

JUDGE PATE: This is the second…this is the second ground for it.

NELSON QUINTERO: No, I'm saying that in our construction of the term inflatable body, the sockets of the prior art in Wortman and Higgs are not built into our construction of the term inflatable body.

JUDGE PATE: Ok. Ok so you're coupling those two arguments together?

NELSON QUINTERO: No, I'm giving our argument first.

JUDGE PATE: Ok. Go ahead.

NELSON QUINTERO: Which is on our construction that it would prevail. But the examiners proposed construction is a body that expands when filled with air or other gas, and so the only difference between our two constructions, the substantial difference, is that ours is substantially airtight.

JUDGE PATE: How do you get around the references referring to their bodies, although they do leak, as inflating? They keep saying they inflate these chambers even though they're not totally sealed.

NELSON QUINTERO: Again our term, our definition of the term is *substantially airtight* and…

JUDGE PATE: Well then aren't they substantially airtight? They're designed to slowly leak.

NELSON QUINTERO: The parts that are leaking…I see you're talking about Higgs here. The part that's substantially leaking in Higgs is the air cushion, not the whole mattress as a whole. So it's the air cushion, which we would call a substantially airtight structure. Clearly when it's in use, it

doesn't just deflate immediately. When the user sits on it, it doesn't deflate. In order to be pumped in the first place, and in order for it to maintain some structure when the user sits on it, it has to be a least substantially airtight.

JUDGE PATE: Ok.

NELSON QUINTERO: Ok. Appellant submits that in the context of the present application, one cannot reasonably interpret the term inflatable body in light of the relevant evidence without concluding that it must be at least substantially airtight. That is the relevant evidence in Phillips v. AWH Corp.

It's the words of the claims themselves, remainder of the specification, the prosecution history, extrinsic evidence concerning the relevant scientific principles, and the meaning of technical terms and the state of the art, and is set forth in In re Hyatt, the claim term must be interpreted in a way that is reasonable and consistent with the specification. As we've recited in the preamble here, the art in question is that of inflatable products. As set forth in the claim the inflatable body is the element of the inflatable product that is pumped i.e. inflated or deflated by the electric pump. In order for an inflatable body of an inflatable product to be filled with air, inflated or deflated such that it causes the body to expand, it must be substantially airtight. It's this characteristic of being substantially airtight that prevents it from deflating by itself or the air escaping into the atmosphere. Furthermore, construing the term inflatable body without having a substantially airtight characteristic would be inconsistent with the specification. The specification describes the body of an airbed that is pumped by an electric pump. Pumping means either bringing air from outside the inflatable body inside, or from inside the inflatable body outside i.e. inflating or deflating. There

would be no need to deflate the inflatable body with the pump if it wasn't substantially airtight to begin with. There are numerous references to the substantially airtight characteristic in the specification. Page 6 lines 24 – 27 it refers to the cap to seal the airbed after inflating operation. There would be no need to seal it if it were not substantially airtight. The uh… page 4 line 29 describes on O-ring, and later on it describes that the O-ring prevents the airbed from leaking. There's, on page 5 line 5 there's a check valve 208 and it's described later on by removing the pump and that check valve, the airbed can then deflate. Pages 5 and 6, a cap 37 is used to seal or unseal the airbed. Pages 10 and 11 there's an embodiment described in which a rubber pad 522 is used to eliminate gaps to prevent leaking. The next embodiments involve inflation/deflation and also include structure to prevent inflation…to prevent leakage after inflation of the airbed. As we set forth in the appeal brief and the reply brief, the structure that the examiner identifies as the alleged body, inflatable body i.e. the mattress 30 as a whole of Wortman or mattress 3 as a whole of Higgs, is not a substantially airtight structure so as to… that expands or swells when filled with air or other gas. Furthermore, the structure that the examiner identifies as the sockets, is not built into what is that substantially airtight structure that expands or swells when filled with air or other gas i.e. the notch 63 in Wortman or the hollow compartment 22 in Higgs are not built into the inflatable cushions 44 and 46 or the inflatable --- 28 in Higgs. Therefore, it is our belief that on our constructions, we should prevail. The examiner's construction, which I mentioned is fairly similar to ours, is a body that expands when filled with air or other gas. It's our view even when using this construction the mattress 30 in Wortman or the mattress 3 in Higgs do not meet this definition, cannot be fairly viewed

as inflatable bodies. Specifically, in Wortman, he describes the inflatable body as including cribs 34 and 36 which are of a solid foam material, inflatable cushions 44 and 46, and the cloth mattress cover 48 as total being the inflatable body. Cribs define a rigid framework on in which an inflatable body, i.e. the cushions, is placed. The cloth mattress cover is disposed over the cribs and the inflatable cushions. When taken as a whole, this whole structure is not filled with air. It's only the cushion that's filled with air. Furthermore, when taken as a whole this body doesn't expand. In the reply brief we included the figures 12, 13 and 14 from Wortman, which show that the cribs maintain exactly the same shape during inflation and deflation. It doesn't grow or expand.

JUDGE PATE: Go on to Higgs.

NELSON QUINTERO: Higgs, ok. With Higgs also we've shown a figure from Higgs and if you have that figure handy it shows two states of inflation. One is 28 which is you can see in 28 it's partially occupying that void and in 28-1 it's expanded to fill that void completely. Again that structure as a whole is not expanding in Higgs. And again in Higgs, that material outside there is foam material, which is not airtight. It is dense. It's not substantially airtight. The examiner has brought up two points. One is the low loss air mattress that you described, which I've already addressed. And in addition, again what we think what the examiner's issue is is not addressing the dichotomy between inflatable product and inflatable body.

JUDGE PATE: All right, I think we understand the argument. Do you have any questions Judge Kerins?

JUDGE KERINS: No I don't.

JUDGE PATE: Judge Bahr?

JUDGE BAHR: No.

JUDGE PATE: No questions from me either. We're going to take this case under advisement. I thank you for your presentation.

NELSON QUINTERO: Thank you.

(Whereupon, at approximately 10:28 a.m., the proceedings were concluded.)